

**DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

**NOTICE OF PROPOSED RULEMAKING**

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in Section 705 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203, D.C. Official Code § 31-5601.01 *et seq.* (2001 Ed.)); hereby gives notice of the intent to adopt the following rules as a new Chapter 38 of Title 17 of the District of Columbia Municipal Regulations (DCMR), in not less than 30 days of the publication of this notice in the D.C. Register. The rules govern the rules of practice and procedure for public hearings held by the Commissioner of the Department of Insurance and Securities Regulation.

A new Chapter 38, Rules of Practice and Procedure for Hearings, is promulgated to read as follows:

**CHAPTER 38**

**RULES OF PRACTICE AND PROCEDURES FOR HEARINGS**

**3800            APPLICABILITY**

3800.1            These rules apply to administrative hearings to be conducted pursuant to the authority in §§ 207, 307, 601 and 602 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code §§ 31-5602.07, 31-5603.07, 31-5606.01, and 31-5606.02).

3800.2            In any proceeding, the Commissioner may, for good cause shown and in the interest of justice or to prevent hardship, waive any provision of this chapter, which is not required by any applicable statute after duly advising the parties of the intention to do so.

**3801            DELEGATION OF HEARING AUTHORITY**

3801.1            The Commissioner may, in his or her discretion, delegate authority to conduct a hearing to a hearing officer. The Commissioner shall serve a notice of delegation on all parties and on the hearing officer.

the Commissioner shall specify in the order of revocation the portions of the matter for which the delegation has been revoked. The revocation order shall be effective on the date the order was signed by the Commissioner, unless a different date appears in the order.

3801.4 The final decision issued by the Commissioner or proposed decision issued by the designated hearing officer shall reflect the revocation of delegation, and a copy of the revocation order shall be included as part of the record, and served on all parties to the proceeding.

**3802 TIME, PLACE OF FILING, AND COMPUTATION OF TIMING**

3802.1 Papers required or permitted to be filed under this chapter shall be filed with the Department of Insurance and Securities Regulation, 810 First Street, NE, Suite 701, Washington, D.C. 20002, or such other places as the Commissioner may designate.

3802.2 Unless otherwise specifically provided by law or these rules, computation of any time period prescribed by these rules or by an order of the Commissioner begins with the first day following the act or event that initiates the time period. If the last day of the time period so computed is a Saturday, Sunday, District of Columbia holiday, or any other day on which the Department is closed, in which event the period runs until the end of the next business day.

3802.3 If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service:

(a) The date of mailing is the date of service; and

(b) Three (3) days are added to the prescribed time period.

3802.4 Except where time periods are prescribed by statute, when an act is required or allowed to be done at or within a specific time, the Commissioner, at his or her sole discretion, may order the period enlarged.

3802.5 Except where time periods are prescribed by statute, the Commissioner may order an enlargement of time made pursuant to a motion that is filed with the Commissioner before the expiration of the period prescribed, for good cause

3803.2 Subpoenas issued pursuant to this section shall be under seal of the Commissioner, and shall describe the document or name the person ordered to be produced, or required to attend the hearing.

3803.3 A subpoena may be served in the same manner as in, and by any person authorized by the Rules of Civil Procedure of the Superior Court of the District of Columbia. A person serving a subpoena shall note the manner, place, and time of service in an affidavit, the original of which shall be made part of the official record.

**3804 NOTICE OF INTENT TO ISSUE ORDERS TO DENY, SUSPEND, REVOKE, FINE, REQUIRE RESTITUTION, AND SUMMARY AND PERMANENT CEASE AND DESIST ORDERS**

3804.1 A formal disciplinary action shall commence on the date the Department issues a notice of intent to issue an order to deny, suspend, revoke, fine, or require restitution, or a summary cease and desist order. The Department may also initiate an action for the entry of a permanent order to cease and desist by issuing a notice of intent.

3804.2 The Commissioner shall serve the notice of intent or summary cease and desist order upon each respondent named in the notice or order. Service may be made by personal service or by registered or certified mail.

3804.3 If the Commissioner is unable to serve any respondent with a summary cease and desist order or notice of intent, proper service may be made by serving the Commissioner as attorney for service of process in accordance with D.C. Official Code § 31-5607.06.

3804.4 In addition to any contents required by statute, a summary cease and desist order or notice of intent shall advise the respondent of the:

- (a) Respondent's right to a hearing;
- (b) Time period within which the respondent must request a hearing;
- (c) Respondent's obligation to file an answer; and

3804.6        The Department shall have the burden of proof in a hearing involving a notice of intent to suspend, revoke, require restitution, fine, or summary cease and desist order when the Commissioner has proposed to take disciplinary action against a licensee.

3804.7        A respondent shall file with the Commissioner a written answer to a notice of intent or summary cease and desist order within ten (10) days of service of the order and within five (5) days of service of any amended order. The parties and the staff of the Department may agree to extend the time for filing the answer up to 30 days. Any additional extension of time may only be granted by order of the Commissioner.

3804.8        The answer shall admit or deny each factual allegation in the notice of intent or summary cease and desist order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

3804.9        The answer shall indicate whether the respondent requests a hearing concerning the notice of intent or summary cease and desist order.

3804.10       If a respondent fails to file a timely answer, the allegations of the notice of intent shall be deemed admitted, and the Commissioner may issue a proposed or final decision adverse to that respondent.

**3805        RESERVED**

**3806        RESERVED**

**3807        RESERVED**

**3808        CONDUCT OF HEARINGS**

3808.1        The Commissioner shall preside at all hearings unless the Commissioner has delegated his or her authority to conduct the hearing to a hearing officer in accordance with these rules.

3808.2        All hearings shall be open to the public. The Commissioner, for good cause

- (b) The Commissioner shall explain briefly the purpose and nature of the hearing and the issues involved;
- (c) The Commissioner may allow the parties to present preliminary matters;
- (d) The parties may make opening statements;
- (e) The Commissioner shall state the order of the presentation of evidence;
- (f) Witnesses shall be sworn or put under affirmation to tell the truth;
- (g) The parties may present closing summations and arguments; and
- (h) The Commissioner shall exclude any irrelevant, immaterial, and unduly repetitious evidence.

3808.4 During the hearing, the Commissioner:

- (a) Shall administer the oath or affirmation to each witness;
- (b) Shall rule on the admissibility of evidence;
- (c) Shall maintain order and take such action as necessary to avoid delay in the conduct of the hearing; and
- (d) May question any witness at any time as to any matter that the Commissioner considers relevant and material to the proceeding.

3808.5 On a genuine issue of relevant fact necessary to the determination of a contested case, each party may:

- (a) Call witnesses;
- (b) Offer direct evidence;
- (c) Cross-examine witnesses; and

permit a party, upon timely request, to contest the facts noticed. The Commissioner may use his or her technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

3808.7 The Commissioner may impose sanctions on a party that does not comply with his or her orders, including entering orders for decision on one or more issues, limiting the introduction of evidence or a party's participation in the proceeding, and addressing other matters he or she deems appropriate.

### **3809 APPEARANCE AT PUBLIC HEARING**

3809.1 All persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the District of Columbia courts. The Commissioner may issue orders appropriate to maintain order, including the exclusion of a disorderly person from the hearing. If the person excluded is a party or its representative, the Commissioner may decide against the party with prejudice.

3809.2 In a proceeding before the Commissioner, an individual may appear in his or her own behalf; a receiver or trustee may appear in such capacity; a general partner of a partnership may represent the partnership; an officer or director of a corporation may represent the corporation; an officer or director of an association may be represent the association; and an official of any District, Federal, or State governmental agency may represent such agency.

3809.3 A party has the right to waive the right to be present at the hearing, and may be represented by counsel who shall be licensed by the highest court of the District of Columbia or any state.

### **3810 FAILURE TO APPEAR**

3810.1 If a party fails to appear at the hearing, either personally or through counsel, the Commissioner may proceed to hold the hearing in that party's absence.

3810.2 The Commissioner may also hold the absent party in default and may issue a proposed or final decision and order against the defaulted party.

3810.3 A party defaulted as a result of a failure to appear at a hearing may file a written

**3811            PREHEARING CONFERENCES**

3811.1        The Commissioner may require parties to appear at a specified date, time, and place for a pre-hearing conference for the purpose of addressing the following matters:

- (a)        Simplification of issues;
- (b)        Admissions or stipulations of fact;
- (c)        Requests for official notice;
- (d)        Discovery disputes, where discovery is expressly allowed by statute, or by order of the Commissioner;
- (e)        Preliminary motions;
- (f)        Admissibility of evidence;
- (g)        Order of presentation;
- (h)        Limitation of the number of witnesses;
- (i)        Exchange of prepared testimony and exhibits between the parties;
- (j)        Scheduling; and
- (k)        Other matters that will promote the orderly and efficient conduct of the hearing.

3811.2        The Commissioner shall make any action taken at a pre-hearing conference part of the record.

**3812            RECORD OF PROCEEDINGS**

3812.1        The Department shall cause all oral proceedings, including testimony, to be recorded by a stenographer or by tape recorder or other device. The recording of the proceedings, which need not be transcribed, shall be maintained in the custody

Commissioner at the respondent's expense.

3812.2 The record of a hearing shall include:

- (a) All pleadings, motions, orders, and related papers filed with the Commissioner;
- (b) All documentary and tangible evidence;
- (c) A statement of matters officially noticed;
- (d) Recordings and any transcripts of oral proceedings;
- (e) The findings of fact and conclusions of law proposed by each party;
- (f) Any exceptions filed by the parties and the Commissioner's rulings on those exceptions;
- (h) If a case has been delegated to a hearing officer for a proposed decision:
  - (1) The notice of delegation,
  - (2) Any notice of revocation,
  - (3) The proposed decision, including proposed findings of fact and proposed conclusions of law, of the hearing officer,
  - (4) Any exceptions filed by the parties,
  - (5) The Commissioner's rulings on any exceptions and proposed findings of fact or conclusions of law, and
  - (6) Any additional information or documentation submitted to the Commissioner by the parties;
- (g) The final findings of fact, conclusions of law, and final decision and order



- 3812.3      Upon compilation, the record shall be available for public inspection at the Department during normal business hours unless the contents are otherwise protected by law, or by order of the Commissioner.
- 3812.4      The Department, upon request of any person, shall arrange for a copy of the record to be made, if the requesting person pays in advance to the Department the estimate of the reasonable cost of making the copy. The copy may be certified by the Commissioner upon request by any person.
- 3813           MOTIONS AND OTHER PLEADINGS: COMMUNICATIONS WITH THE COMMISSIONER**
- 3813.1      Except by leave of the Commissioner during a hearing, a party seeking an order or other relief or action from the Commissioner regarding a pending matter that is the subject of public hearing, shall file a written motion with the Commissioner, which shall become part of the public record.
- 3813.2      Responses to written motions shall be filed with the Commissioner no later than ten (10) calendar days after the motion has been served.
- 3813.3      All motions and responses shall be accompanied by a memorandum setting forth:
- (a)      a statement of the facts;
  - (b)      legal points and authorities in support thereof; and
  - (c)      a proposed order.
- 3813.4      No rejoinders or replies to responses will be accepted without leave of the Commissioner.
- 3813.5      The Commissioner may, when deemed necessary, act upon a motion at any time without awaiting responses.
- 3813.6      Unless otherwise ordered by the Commissioner, no hearing shall be convened on motions.
- 3813.7      Any person who is seeking to inform the Commissioner of relevant information

3813.8 Any person filing a motion, pleading, letter, or other document shall sign and date the filing and include the address and telephone number of the filing party. The document shall contain a certification of service indicating that the filing has been served on all parties to the proceeding.

**3814 SERVICE OF PLEADINGS**

3814.1 Written motions and all other pleadings shall be served on all parties.

3814.2 When filed, these pleadings shall be accompanied by proof of service upon all parties. Proof of service of any pleading shall be by certificate of service, affidavit or affirmation, or receipt.

3814.3 Service of pleadings shall be made by one of the following methods:

- (a) United States mail, with first-class postage prepaid;
- (b) By personal delivery to the respondent; or
- (c) By leaving it at the respondent's place of business with a person in charge or an employee or, if the office is closed or the respondent has no place of business, by leaving it at the party's usual place of residence with a person of suitable age and discretion who is at least sixteen (16) years of age or older residing there.

3814.4 Service by mail is complete upon mailing.

3814.5 Service on a general partner shall be valid service on the partnership.

3814.6 Service on an officer or director or registered agent of a corporation or association shall be valid service on that corporation or association.

3814.7 When any party is represented by an attorney, service of all pleadings shall be made upon the attorney and that service shall be considered service upon that party or those parties.

**3815 EX PARTE COMMUNICATIONS**

- 3815.2 The Commissioner shall not be prohibited from communicating with officials of the District government and members of the Department not representing the Department in the proceeding on policy and procedural matters during the course of a proceeding before the Commissioner.
- 3815.3 The Commissioner shall not be prohibited from communicating with any party that is a regulated entity or person of the Department on matters not related to the merits of a matter before the Commissioner.
- 3815.4 If the Commissioner determines that a person has violated the prohibition on *ex parte* communications, he or she may impose appropriate sanctions against that person, which may include excluding the person from the proceeding or deciding against it with prejudice.
- 3815.5 As used in this section, the term "*ex parte*" shall mean any oral or written communication related to the merits of a pending matter made to the Commissioner, not in the public hearing record, with respect to which reasonable prior notice to all parties to the proceeding is not given. An inquiry about the status of a proceeding is not considered an *ex parte* communication.

**3816 POST-HEARING PROCEDURES**

- 3816.1 If the matter is heard before a hearing officer, the hearing officer shall serve proposed findings of fact, proposed conclusions of law, and a proposed order to on all parties and the Commissioner within 20 days of the close of the hearing to the Commissioner for adoption, amendment, or rejection.
- 3816.2 A party served with proposed findings of fact, proposed conclusions of law, and a proposed order shall have the right to file exceptions within 20 days of service of the proposed order to the proposed findings of fact, proposed conclusions of law, and a proposed order. In addition, the party shall have the right to present argument to the Commissioner, who shall consider the exceptions and argument, and renders his or her final findings of fact, conclusions of law and order within 10 days after receiving the exceptions, replying to exceptions, or hearing oral arguments, whichever is later.
- 3816.3 If the matter is heard before the Commissioner, the Commissioner shall make a

or modification of the final order. A party requesting a stay of the final order shall include such request in the motion. The Commissioner shall, within 20 days after receiving the motion for reconsideration or modification, grant or deny the motion.

**3817            APPEAL RIGHTS**

3817.1            Judicial review of final order of the Commissioner shall be by petition to the District of Columbia Court of Appeals.

**3818            SEVERABILITY**

3818.1            If any section or portion of a section of these rules, or the applicability thereof to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of these rules, or the applicability thereof to other persons or circumstances, will not be affected thereby.

**3899            DEFINITIONS**

"Commissioner" means the Commissioner of the Department of Insurance and Securities Regulation or designated hearing officer.

"District" means the District of Columbia.

"Party" means the Mayor and any person or agency named or admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting or an agency from admitting the Mayor or any person or agency as a party for limited purposes.

"Person" means any natural or artificial person, including but not limited to, individuals, partnerships, associations, trusts, or corporations.

"Respondent" means a person against whom an adverse action is contemplated, proposed, or taken.

“Notice of Intent” means a charging document issued by the Commissioner that alleges facts that constitute a violation of, or a failure to comply with, the law by the respondent and that directs

- (a) A stop order issued by the Commissioner;
- (b) A summary postponement or suspension; and
- (c) A summary denial or revocation.

Persons desiring to comment on these proposed regulations should submit comments in writing to Ms. Leslie Johnson, Hearing Officer, Department of Insurance and Securities Regulation, Office of Legal Affairs, 810 First Street, N.E., Suite 701, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the District of Columbia Register. Copies of these rules and related information may be obtained by writing to the address stated above.